

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARIUS BROADNAX,	§
	§ No. 371, 2006
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0304012678
	§
Plaintiff Below-	§
Appellee.	§

Submitted: December 7, 2006

Decided: January 30, 2007

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

**ORDER**

This 30<sup>th</sup> day of January 2007, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Darius Broadnax, filed an appeal from the Superior Court's June 14, 2006 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of Broadnax' opening brief that the appeal is without merit. We agree and affirm.

(2) In July 2004, Broadnax was found guilty by a Superior Court jury of Murder in the Second Degree as a lesser-included offense of Murder in the First Degree and Possession of a Firearm During the Commission of a Felony. He was sentenced to a total of 24 years of Level V incarceration, to be suspended after 20 years for work release and probation. This Court affirmed Broadnax' convictions and sentences on direct appeal.<sup>1</sup>

(3) In this appeal, Broadnax claims that his trial counsel provided ineffective assistance by failing to object on hearsay grounds to the admission of testimony from two witnesses concerning a three-way phone conversation they had with Broadnax. To the extent that Broadnax has not argued other grounds to support his appeal that were previously raised, those grounds are deemed waived and will not be addressed by this Court.<sup>2</sup>

(4) In order to prevail on his claim of ineffective assistance of counsel, Broadnax must demonstrate that his counsel's representation fell below an objective standard of reasonableness and that, but for his counsel's unprofessional errors, there is a reasonable probability that the outcome of

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<sup>1</sup> *Broadnax v. State*, Del. Supr., No. 412, 2004, Berger, J. (Mar. 22, 2005).

<sup>2</sup> *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993). In his postconviction motion filed in the Superior Court, Broadnax also argued that his counsel provided ineffective assistance by failing to: object to the prosecutor's leading questions; object to the trial judge's failure to apprise him of his Fifth Amendment privilege against self-incrimination; conduct a proper investigation; keep him apprised of the status of his case; and consult him about the issues to be presented on appeal.

the proceedings would have been different.<sup>3</sup> Although not insurmountable, the Strickland standard is highly demanding and leads to a “strong presumption that the representation was professionally reasonable.”<sup>4</sup>

(5) Broadnax has failed to demonstrate that his counsel erred by failing to move to exclude as inadmissible hearsay certain statements made by Broadnax during a three-way phone conversation. Because it appears that any such statements would have been admissible as admissions by a party opponent,<sup>5</sup> Broadnax’ counsel cannot be faulted for not objecting to their admission at trial. In the absence of any evidence that any error on the part of Broadnax’ counsel resulted in prejudice to him, we conclude that his claim of ineffective assistance of counsel is without merit.

(6) It is manifest on the face of Broadnax’ opening brief that the appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

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<sup>3</sup> *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

<sup>4</sup> *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

<sup>5</sup> D.R.E. Rule 801(d) (2) (A).

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/Henry duPont Ridgely  
Justice